

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 8143, 8147, 8149
and 8151 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and Sd/-
MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

HARENDRASINH B ZALA

Versus

STATE OF GUJARAT

Appearance:

MR JV JAPEE for Petitioner
Asstt. G.P. for the respondents

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH

Date of decision: 25/11/98

ORAL JUDGEMENT (Per M.S.Shah, J.)

Rule. The learned AGP waives service of notice of Rule on behalf of the respondents. In the facts and circumstances of the case and at the request of the learned counsel appearing for the parties, the petitions are taken up for final disposal today.

2. In these petitions under Article 226 of the

Constitution, the petitioners, who were members of the Home Guards and serving as officers-in-charge, Home Guards at Talod, Tintoi, Tajpur and Choyala in Sabar Kantha District have challenged the constitutional validity of section 6(B)(1-A) of the Bombay Home Guards Act, 1947 and have also challenged the order dated 11.12.1995 (Annexure "B" to the petitions) issued by the Deputy Commandant General as per the direction given by the State Government to discharge all officers of Home Guards in taluka cadre and the petitioners have also prayed for directing the respondents to reinstate the petitioners to their original posts.

3. The petitioners were officers-in-charge of the taluka units of the Home Guards at the aforesaid places. The Deputy Commandant General, Home Guards, Gujarat State at Ahmedabad, respondent No. 3 herein, on the directions of the State Government, issued order dated December 11, 1995 (Annexure "B" to the petitions) relieving all the Home Guard Officers at taluka level. Some of the Home Guard Officers who were relieved by the aforesaid order had challenged the said order in Special Civil Application No. 10600 of 1995 and other allied matters. This Court allowed the said group of petitions and directed reinstatement of the concerned officers on their original posts.

4. The learned counsel for the petitioners has stated at the hearing today that the petitioners were of the bona fide belief that the petitioners' cases will also be considered by the respondents in light of the judgment of this Court in the aforesaid group of petitions, but since that was not done, the petitioners have made inquiries and the petitioners were asked to approach this Court. Under the circumstances, the petitioners have filed these petitions and prayed for the aforesaid reliefs.

5. At the time of hearing of these petitions, the learned counsel for the petitioners has given up challenge to the constitutional validity of section 6(B)(1-A) of the Bombay Home Guards Act, 1947 (hereinafter referred to as "the Act"). Hence, prayer in para 9(A) of the petitions is rejected as not pressed.

6. It is clear that in view of the Government decision dated December 2, 1995, the Home Guards Head Quarters had addressed a letter, which is produced at Annexure "B" to the petitions, to all the District Commandants to relieve all the Home Guards with immediate effect. By the said letter, Liaison Officer, City Rural

Sector 1, 2 & 3, Senior Divisional Commander etc. were directed to obtain resignations. The petitioners and others were actually terminated from service at the behest of the State Government. It is clear that Rule 8 of the Bombay Home Guards Rules, 1953 provides that the term of the office of the member of Home Guards would be for three years. It also provides that person appointed shall be eligible for reappointment. Section 6(B)(1-A) of the Bombay Home Guards Act, 1947 provides that the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed if, in the opinion of the Commandant the services of such members are no longer required. Rule 9(A) of the Rules provides that no member of the Home Guards shall be discharged under Section 6(B)(1-A) of the Act unless the Commandant or Commandant General is satisfied that such member has committed an act detrimental to the good order, welfare or discipline of the Home Guards Organization. In the case of A.K. JADEJA vs. STATE OF GUJARAT, JUDGMENT TODAY 1995(6) SC 146, the Apex Court has held that when statutory power is conferred upon one authority and is in substance exercised by another such decision would be ultra vires and void. In the present case, statutory authorities are Commandant and Commandant General and not Government and, therefore, the action taken on the direction of the Government would be ultra vires and void. There is no provision in the Act or Rules which empowers the Government to direct termination of services of any member of Home Guards or all the members of the Home Guards as was sought to be done by the impugned decision of the Government. The decision is clearly without authority of law and without competence and, therefore, that decision will have to be quashed and set aside. Similar view is taken in Special Civil Application No. 3502 of 1996 decided by this Court (Coram : Acting C.J. R.A. Mehta and C.K. Thakker, J.) on 27.1.1997 and Special Civil Application No. 5237 of 1997 and other cognate matters decided on 7.10.1997 by this Court (Coram : Acting C.J. R.A. Mehta & S.D. Pandit, J.). The said decisions were followed by this Court (Coram : Acting C.J. K.G. Balakrishnan & J.M. Panchal, J.) in Sp. Civil Application Nos. 4720 of 1998 and 6515 of 1998.

7. In view of the above discussion, the petitions deserve to be allowed. The petitions accordingly succeed. The impugned termination of services of the petitioners is declared to be void and illegal. Annexure "B" to each of the petitions is hereby quashed and set aside. The respondents are directed to reinstate the

petitioners on their original posts within one month from the date of receipt of a certified copy of this judgment.

8. Rule is made absolute accordingly with no order as to costs.

Sd/-

November 25, 1998 (K.G. Balakrishnan, CJ.)

Sd/-

(M.S. Shah, J.)

(sundar)